IN THE HIGH COURT OF UTTARANCHAL AT NAINITTAL

Chapter VIII, Rule 32(2) (b)
Description of case

Civil Writ Petition No. 1477 of 2003 (S/S)

Manoj Kumar Sharma …… Petitioner.

Versus

State of Uttaranchal
Through the Chief Engineer,
Uttaranchal and others …… Respondents.

Date of decision: 06, October 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant.

- Whether the order/judgment should be sent to the reporters for reporting? (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

Reserved Judgment

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Manoj Kumar Sharma ……. Petitioner

Versus

State of Uttaranchal
Through the Chief Engineer,
Uttaranchal and others ……. Respondents

Mr. K.N. Joshi, learned counsel for the petitioner.
Mr. P. Maulekhi, learned Addl. Advocate General for respondents.

Hon'ble P.C. Pant, J.

By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioner has sought writ in the nature of certiorari for quashing the impugned orders dated 30th September 2003 and 13th October 2003 whereby the petitioner's contractual services have been declared to have come to an end.

2) Brief facts of the case, as narrated in the writ petition, are that the petitioner was initially appointed on 03.11.1998 as Environmental Specialist in District Project Management Unit, Pithoragarh for one year at a fixed pay of Rs. 3000/- per month. It appears that from time to time he was again engaged continuously and lastly he was posted as Environmental Specialist in District Drinking Water and Cleanity Mission, Haridwar. It is alleged in the writ petition that vide office memorandum dated 25.06.2003 (copy Annexure- 3 to the writ petition) some 40 posts of the Specialists were sanctioned for the period 16.06.2003 to 29.02.2004 including that of the Environmental Specialist. According to the petitioner he was informed vide impugned letter dated 30.09.2003 (copy Annexure- 6 to the writ petition) that he is attached with the

District Drinking Water and Cleanity Committee only up to 30.09.2003 and vide another impugned letter dated 13.10.2003 (copy Annexure- 7 to the writ petition) the petitioner's attachment from the post of Environmental Specialist was cancelled. The petitioner has challenged these orders as illegal, arbitrary and violative of Article 14 and Article 16 of the Constitution of India. He has alleged that his work and conduct was very good and the impugned orders are challenged through this writ petition.

3) A counter affidavit has been filed on behalf of the respondent Nos. 2, 3 and 4 whereby it has been admitted that initially the petitioner was appointed as Environmental Specialist at fixed pay of Rs. 3,000/- per month for a year. It is further stated in the counter affidavit that from time to time his appointment was renewed on contractual basis for every year on fixed payment of Rs. 8,000/- per month i.e. Rs. 96,000/- per year. His last annual contract came to an end on 15.06.2003. Thereafter on 31.07.2003 a fresh Contract was made for a period up to 30.09.2003. According to the respondents his term was not extended beyond said date nor he has right to continue in the post. It is also stated in the counter affidavit that as per the agreement between the parties any dispute relating to Contract was to be referred to arbitration, as such the writ petition is not maintainable.

4) I heard learned counsel for the parties and perused the affidavit, counter affidavit, rejoinder affidavit along with the annexures annexed thereto.

5) The questions for consideration before this Court is two fold:

1. Whether the petitioner has right to continue to serve as Environmental Specialist beyond 30.09.2003?
2. Whether the writ petition is not maintainable in view of the Arbitration Clause between the parties?

6) Admittedly, initially the petitioner was appointed as Environmental Specialist in the year 1998 for one year on fixed pay of Rs. 3,000/- per month on contractual basis. It is also admitted that thereafter from time to time his annual contracts were renewed and monthly payment was raised to Rs. 8,000/- per month. It is also not disputed that till 30th September 2003, the petitioner continued to work, where after the respondents refused to renew the Contract or to give fresh payment as Environmental Specialist. The disputes relate to the right of the petitioner to the post and the violation of the terms, if any since payment was on contractual basis. As such once the Contract comes to an end, it cannot be said if the petitioner has right to continue beyond the period of Contract. Learned counsel for the petitioner could not show me any document by which he has a right to continue to serve as Environment Specialist after 30.09.2003. Merely submitting that the posts have been sanctioned by the Government up to 29.02.2004 does not entitle the petitioner to continue over it unless the agreement is entered between the parties for that period.

7) Also, Clause 16 of the agreement dated 08.12.2001 (copy Annexure- 4 to the writ petition) relied by the petitioner, itself shows that it contains following Clause in the agreement:

> *"Any dispute arising out of the Contract, which cannot be amicably settled between the parties, shall be referred to adjudication / arbitration in accordance with Arbitration and Conciliation Act, 1996."*

The same Clause is in the agreement dated 21st December 2002 (copy annexed as Annexure- C.A. 3 to the counter affidavit) filed by the respondents, which has been signed by both the parties. In view of the said agreement clause also, between the parties, this Court is not inclined to issue any writ or direction under Article 226 of the Constitution of India.

8) In view of the discussion as above and in the circumstances, the writ petition is liable to be dismissed. Accordingly, the writ petition is dismissed. No order as to s costs.

(P.C. Pant, J.)

Dt: October 6, 2004
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